

REMARKS

The Examiner has required restriction under 35 U.S.C. § 121 to one of the following groups:

- I. Claims 33, 34, 37, 38, 48-52 and 87-108.
- II. Claims 33, 34, 37, 39, 40, 48-52 and 87-108.
- III. Claims 33, 34, 41, 42, 48-52 and 87-108.
- IV. Claims 33, 34, 41, 43, 44, 48-52 and 87-108.
- V. Claims 33, 34, 41, 45, 48-52 and 87-108.
- VI. Claims 33, 34, 41, 46-52 and 87-108.

In addition, the Examiner has required Applicants to select one formula from each of claims 48-52 and 87-108, and one functional group from each of the substituents R¹, R², R³, R⁴ and base. Furthermore, Applicants are required to select one formula from each of the substituents within the definition of the selected base. Applicants understand this to be an election of species and not part of the restriction requirement. Applicants understand further that the full scope of the elected group will be examined in this application.

Applicants elect group I, consisting of claims 33, 34, 37, 38, 48-52 and 87-108, wherein the 2'-branched nucleoside is a pyrimidine nucleoside.

With regard to the election of species, Applicants select claim 50, formula (iv), wherein L is "CH," E is "CQ⁵," W is "O" and Q⁵ is "H."

Regarding the Examiner's requirement that Applicants select the one functional group from each substituent, Applicants select the following groups: R¹ is hydrogen, R² is an ester of valine, R³ is hydrogen and , R⁴ is methyl.

Therefore, the compound that corresponds to the elected structural formula is 3'-L-valinyl-β-D-2'-methyl-cytidine.

Finally, Applicants respectfully point out to the Examiner that claims 33 and 34 are linking claims, therefore, claims 33 and 34 must be examined with the invention elected. *See* Manual of Patent Examining Procedure ("MPEP") § 809. Furthermore, "should any linking claim be allowable, the restriction requirement between the linked inventions must be withdrawn." *Id.*

Examination of the elected claims is respectfully requested. Applicants reserve the right to file divisional or continuation applications directed to any canceled subject matter.



Application No. 10/715,729
Attorney Docket No. 11874-064-999


CONCLUSION

Please apply fees for the extension of time for one month (\$120.00) and any other charges, or any credits, to Jones Day Deposit Account No. 503013.

If the Examiner believes it would be useful to advance prosecution, the Examiner is invited to telephone the undersigned at (858) 314-1200.

Respectfully submitted,

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